

under whom he claims, have, together, for greatly over twenty years, and for probably one hundred years or more, had the full, uninterrupted and complete use and enjoyment of a road from their farm over a parcel of land now occupied and owned by the defendant. This averment the answer explicitly denies, and affirms that no such right of way was ever had or claimed, and that the parties using the said road only had the permission of the owners of the farm now held and owned by the defendant, who have always kept up gates thereupon, and that he, the defendant, put up bars to keep in his stock, with the knowledge, and without any objection on the part of his father, under whom the complainant claims. That the father never claimed and exercised an adverse right of way, but that he at all times admitted the defendant's right to close up said road, and merely obtained his permission to use it during his lifetime.

This answer having removed the ground upon which the equity of the bill rested, an order was obtained to take depositions under the act of Assembly, and several depositions have been taken.

Some of the witnesses certainly do prove a user of the road in question for a period exceeding twenty years, and if the case rested upon their evidence alone, the requisite foundation would be laid for the presumption of a grant, and the plaintiff would be entitled to be protected in the enjoyment of the road.

But the denials of the answer in regard to the use of this road as a matter of right, and its assertion that its enjoyment was the result of the leave or favor of this defendant, granted to those under whom the plaintiff claims, is clearly and unequivocally corroborated by one witness, whose situation, with reference to the property and relations to the parties gave him peculiar means of obtaining correct information upon the subject. It is most manifest from the testimony of Charles H. Pue, who is the brother of the parties, that their father, under whom the complainant claims, did not pretend to a right to use this road adversely, but, on the contrary, that he fully recognized the authority of the defendant to shut it up if he chose